

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Real Estate
Appraiser License Application of
Justin Heinrich

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for a hearing before Administrative Law Judge Barbara L. Neilson on July 20, 2006, at 9:30 a.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Commerce ("the Department"). Justin Heinrich, 10813 Sunset Terrace North, Brooklyn Park, MN 55443, appeared on his own behalf, without an attorney. The OAH record closed at the conclusion of the hearing on July 20, 2006.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the office of Kevin Murphy, Deputy Commissioner of Commerce, 85 Seventh Place East, Suite 500, St. Paul, Minnesota 55101-2198, for information about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

STATEMENT OF ISSUES

In 2005, the Respondent was convicted of receiving stolen property, a felony, in Hennepin County District Court. The issue presented in this case is whether the Respondent thereby engaged in conduct that demonstrates that he is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act as a licensed real estate appraiser under Minn. Stat. § 45.027, subd. 7(a)(4) (2004), and, if so, whether the Department's denial of his application for licensure should be affirmed.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Respondent, Justin Heinrich, applied to the Department of Commerce for a registered real property appraiser license on or about March 31, 2006, after completing licensing education courses and passing the examination required by the Department. On his application, the Respondent checked "yes" in response to a question asking whether he had ever been charged with or convicted of any criminal offense in any court, other than traffic violations. He provided documents relating to a criminal conviction for receiving stolen property to the Department with his application.¹

2. In August of 2004, the Respondent was charged in Hennepin County District Court with two felony counts, one alleging receipt of stolen property and the other alleging theft of a motor vehicle. In the criminal complaint, the State alleged that the Respondent had admitted that he stole a vehicle, removed the engine, transmission and seats from the vehicle, and sold the engine to another person.² The Respondent ultimately entered a guilty plea on January 12, 2005, to the first count of receiving stolen property, and the second count was dismissed.³

3. On April 6, 2005, the District Court entered a stay of imposition with respect to the Respondent's case. The Respondent was ordered to complete 30 days of "sentence to service" and pay \$500.00 in restitution. He completed both of those conditions successfully. He is currently on Administrative Probation which is due to expire on April 6, 2008.⁴

4. Cheryl Costello, senior investigator with the Department of Commerce, reviewed the Respondent's application for a registered real property appraiser license and documentation relating to his conviction, and determined that his application should be denied because the Respondent's past conviction demonstrated that he had engaged in untrustworthy and dishonest conduct.⁵

¹ Ex. 1; Testimony of Cheryl Costello, Justin Heinrich.

² Exs. 1, 2.

³ Ex. 1 at 9.

⁴ Ex. 1 at 5.

⁵ Testimony of C. Costello.

5. The Respondent has written a letter to the District Court seeking an order releasing him from the stay of imposition and reducing the felony to a misdemeanor.⁶ He had not received any response to this request by the date of the hearing in this matter.⁷

6. At the hearing, the Respondent expressed regret that he purchased a stolen engine and contended that this is a mistake that anyone could make. He contends that this conviction will not affect his work and asserts that he is well-qualified to serve as an appraiser.⁸

7. The Respondent has no other criminal convictions.⁹

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider this matter under Minn. Stat. §§ 45.027, subd. 7, and 14.50.

2. Respondent received due, proper and timely notice of the charges against him, and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

4. The burden of proof in this proceeding is on the Respondent to show by a preponderance of the evidence that he should be granted a license in this matter.¹⁰

5. The Commissioner of Commerce may deny an application for a real estate appraiser's license if the Commissioner finds that it is in the public interest to do so and the applicant has "engaged in an act or practice, whether or not the act or practice directly involves the business for which the person is licensed or authorized, which demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the commissioner."¹¹

6. Minn. Stat. § 45.027, subd. 10, specifies that "Chapter 364 [relating to rehabilitation of those convicted of crimes] does not apply to an applicant for a license . . . where the underlying conduct on which the conviction is based would be grounds for denial . . . of the license."

7. Respondent's conduct as evidenced by his conviction in 2005 for receiving stolen property demonstrates that he is "untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license" of registered

⁶ Ex. 5.

⁷ Testimony of J. Heinrich.

⁸ Ex. 1 at 3-5; Testimony of J. Heinrich.

⁹ Testimony of J. Heinrich.

¹⁰ Minn. R. 1400.7300, subp. 5.

¹¹ Minn. Stat. § 45.027, subd. 7(a)(4).

real property appraiser under Minn. Stat. § 45.027, subd. 7(a)(4). This conduct directly relates to the occupation for which the license is sought and warrants the denial of his license application under Minn. Stat. § 45.027, subd. 10.

8. These Conclusions are reached for the reasons discussed in the Memorandum below, which is hereby incorporated in these Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Department's denial of the Respondent's application for a real estate appraiser's license be AFFIRMED.

Dated: August 21, 2006

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

Reported: Tape Recorded (not transcribed); 1 tape.

MEMORANDUM

The Respondent entered a guilty plea to a felony charge of receiving stolen property just 19 months ago for conduct that occurred in late 2003. The Respondent contended at the hearing that he did not in fact steal a vehicle and that he merely got caught after making the mistake of purchasing an engine that turned out to be stolen. However, the complaint filed by the State in the criminal case alleges that the Respondent admitted that he stole a vehicle; removed the engine, transmission, and seats from the vehicle before abandoning it; and sold the engine to another individual.

The misconduct on which the conviction is based is sufficiently recent and serious in nature and sufficiently related to the types of activities involved in real estate appraisal to justify denial of the Respondent's license application at this time. The veracity of real estate appraisers and of the appraisals they perform is obviously very important. Real estate appraisers have unfettered access to the homes and personal property of others. They also handle financial documents and serve in a fiduciary capacity. The Department has shown that the denial of the Respondent's license application is warranted because his conduct in receiving stolen goods demonstrates that he has acted in an untrustworthy fashion at least on one occasion in the recent past. Accordingly, the Administrative Law Judge has recommended that the Department's denial of the Respondent's license application be affirmed.

Although the Respondent invested a significant amount of time and money in taking the exam and educational courses required for licensure and understandably is upset that the company offering the courses assured him that his conviction would not

pose a problem, it appears that the Department representative to whom he spoke merely told him that the Department considers on a case-by-case basis whether a particular conviction should affect an applicant's ability to be licensed. It therefore does not appear that the Department assured him of success in the application process or otherwise mislead him about his prospects. The Department may wish to consider providing potential applicants with more detailed information on their ability to submit a pre-application inquiry so that they could find out at an earlier stage whether the Department believes that a particular conviction would cause it to deny licensure.

B.L.N.